Office of the Saskatchewan Information and Privacy Commissioner January 2009

FOIP FOLIO

TRIBUTE TO A SPECIAL MAN

On January 13, 2009 **Cam Moore** passed away. Cam had come to our office just one year ago as a Portfolio Officer after retiring from the Moose Jaw Police Service. He had an immediate positive impact on our Office of the Information and Privacy Commissioner (OIPC). He threw himself into the access and privacy world with gusto. Notably, he did almost all of the investigative work on the abandoned medical records that came to our attention last year. What we will remember in addition to his enthusiasm, his professionalism and initiative was his insatiable curiosity and his consistent good humour even when he received a devastating medical diagnosis. We will miss his kindness, his generosity and his open and supportive approach to all of his colleagues.

NEW FOIP REGULATIONS

All FOIP Coordinators will want to become familiar with *The Freedom of Information and Protection of Privacy Amendment Regulations, 2008* (OC 858/2008) and in the case of FOIP Coordinators in local authorities, *The Local Authority Freedom of Information and Protection of Privacy Regulations* (OC 859/2008). Both regulations came into force last month. There is substitution of "ministry" for "department" plus additional provision for non-consented disclosure of personal information for debt collection purposes (only for government institutions). The new regulations are available at www.qp.gov.sk.ca.

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PRESIDENT OBAMA FOCUS ON TRANSPARENCY

On his first day as President, **Barak Obama** committed his administration to a higher degree of transparency. In issuing his presidential memorandum on January 21, 2009 the new President stated that "Starting today, every agency and department should know that this administration stands on the side not of those who seek to withhold information, but those who seek to make it known." The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. And the President did not exempt himself. Any information that the President does not want to release will be referred to the attorney -general and to the White House counsel, who will rule on whether the President is entitled to withhold the information. For more information, see www.openthegovernment.org.

NEWFOUNDLAND REPORT HIGHLIGHTS GAP IN SK FOIP

Newfoundland and Labrador Information and Privacy Commissioner **Ed Ring** has issued Report A-2009-001 (Executive Council). In that report, he upheld the decision of the public body that a request for all emails to and from seven people in the Premier's Office for a one month period would constitute an unreasonable interference with the operations of that public body. The statutory provision in that case stated that:

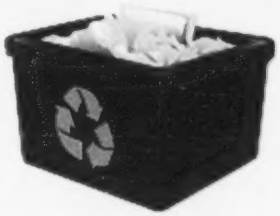
> 10.(1) Where the requested information is in electronic form in the custody or under the control of a public body, the head of the public body shall produce a record for the applicant where (a) it can be produced using the normal computer hardware and software and technical expertise of the public body; and (b) **producing it would not interfere unreasonably with the operations of the public body.**

Such a provision is common in modern access legislation. In this case, the evidence was that the number of emails encompassed by the request was over 119,000 and that it would take about 8 months to process the request. Interestingly, this would not be an option if such a request was made in Saskatchewan under FOIP. All that could be done in this province would be to extend the time to respond "for a reasonable period not exceeding 30 days" [section 12(1)(a)]. The Newfoundland decision is available at www.oipc.gov.nl.ca.

DEALING WITH A PRIVACY BREACH

The OIPC has now published a set of *Privacy Breach Guidelines* on our website, www.oipc.sk.ca, under the *Resources* tab. This document draws from work done by the Privacy Commissioner of Canada and our colleagues in British Columbia, Alberta and Ontario. This represents privacy best practices that we urge public and private bodies to adopt. We will be referencing these guidelines in any breach of privacy investigations the OIPC undertakes.

BLOWING IN THE WIND—A CAUTIONARY TALE



A recent example from Ontario should serve as a reminder for Saskatchewan trustees to ensure they are meeting the statutory obligations to protect personal health information under section 16 of *The Health Information Protection Act* (HIPA).

> **16** Subject to the regulations, a trustee that has custody or control of personal health information must establish policies and procedures to maintain administrative, technical and physical safeguards that will:
>
> (a) protect the integrity, accuracy and confidentiality of the information;
>
> (b) protect against any reasonably anticipated:
>
> (i) threat or hazard to the security or integrity of the information;
>
> (ii) loss of the information; or
>
> (iii) unauthorized access to or use, disclosure or modification of the information; and
>
> (c) otherwise ensure compliance with this Act by its employees.

Ontario's Information and Privacy Commissioner, **Ann Cavoukian**, is launching an investigation into how sensitive medical records ended up blowing around a downtown Ottawa street on December 30, 2008. The records, containing information about patients, including names, birth dates, phone numbers, and test results, were found by a parking lot attendant outside a medical centre which houses a medical imaging clinic operated by CML Healthcare.

News reports indicate the records were blown out of a recycling bin near the clinic. A CML employee told the media that documents are only placed in the recycling bin while waiting to be shredded. She added that the incident was clearly due to a mistake and that the company would launch its own internal investigation.

The Office of the Information and Privacy Commissioner of Ontario will try to determine if proper protocols were in place to protect the privacy of personal health information, and how this breach of privacy may have occurred. The investigation could result in an order finding the company in breach of Ontario's *Personal Health Information Protection Act*, and could result in significant fines and legal action against the company.

As Commissioner Cavoukian commented, the treatment of records in this case is akin to putting a box of health records out on the curb for disposal. Such treatment of personal health information is untenable and in contravention of health information protection legislation.

Our office has commented on the duty of trustees to ensure proper safeguards are in place to protect personal health information. In Investigation Report H-2005-002, the Commissioner commented that while "HIPA does not particularize the kinds of safeguards required to discharge the section 16 obligation. ... To discharge its obligation under section 16 of HIPA, I find that a trustee must address three different kinds of safeguards: (1) administrative; (2) technical and (3) physical."

Our office views Canada's Health Informatics Association's *Guidelines for the Protection of Health Information* as a best practice for Saskatchewan trustees. In addition, there is also much useful information in the Privacy and Security Rules published under the United States *Health Insurance Portability and Accountability Act of 1996.*

A full-text version of our Investigation Report H-2005-002 is available on our website at www.oipc.sk.ca under the *Reports* tab.

MAP OF CANADIAN ACCESS AND PRIVACY LAWS

Our office is frequently consulted by citizens attempting to determine which of the 7 access/privacy laws in force in Saskatchewan apply to them or to a particular organization. To simplify this issue, we have now published on our website a map of Canada showing different provincial/territorial access and privacy laws. A second map shows which federal laws apply in different provinces and territories. Finally, a third map shows the oversight officers for those different jurisdictions. You can access these maps at www.oipc.sk.ca under the *Resources* tab.

NEW PROCEDURAL DEFECT PROCESS ALSO APPLIES TO HIPA AND TO REQUESTS FOR CORRECTION

In recent FOIP FOLIOs (January 2007 and June 2007), we noted the large volume of review files we receive involving procedural defects, including failures to respond within 30 days (deemed refusal), no identification of the statutory authority for exemptions to access, deficient fee estimates, inadequate severance practices, etc. On a number of occasions we receive review files in which some of an applicant's requests have been responded to, but other requests in the same application have been missed or ignored, or where a government institution or local authority has asked an applicant to narrow a request and has put a halt to the entire process (e.g. to provide fee estimates, etc.) until the applicant responds.

As of September 1, 2007, we initiated a new process for addressing such procedural defects. In this process, the government institution or local authority is notified of the defect and given 7 business days to remedy it. If the defect is not remedied within 7 days, the Commissioner notifies the Deputy Minister or CEO of the government institution.

We would like to make two further notes to our procedural defect process. The first is that it applies equally to the procedural requirements for trustees under (HIPA). The procedural requirements in section 36 of HIPA closely reflect the procedural requirements in sections 7 of *The Freedom of Information and Protection of Privacy Act* (FOIP) and its local authority counterpart *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). Any defect in responding to an access request in accordance with section 36 of HIPA will be subject to the same remedial process outlined above.

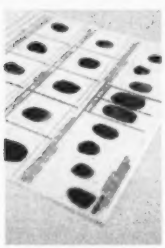
The second note is that the procedural defect process also applies to requests for correction or amendment to personal information in all of the three provincial access and privacy laws this office oversees. Sections 32(2) of FOIP, 31(2) of LA FOIP and 40(3) of HIPA require that a government institution, local authority or trustee responds to such requests within 30 days. A failure to do so will be subject to the 7-day remedy requirement, including possible notification of the Deputy Minister, CEO or director of the government institution, local authority or trustee.

Our thanks to all government institutions, local authorities and trustees who have worked collaboratively with us to address procedural concerns. Your cooperation is making a positive difference to the access regime in Saskatchewan.

ACCESS AND PRIVACY BRANCH FOIP INDEX

Congratulations to **Duane Mombourquette** and his crew in the Access and Privacy Branch at Saskatchewan Justice for a new feature on their website, www.justice.gov.sk.ca/accessandprivacy. This provides a useful section index of *The Freedom of Information and Protection of Privacy Act* and a link to OIPC reports relevant to each section.

CAN YOU COLLECT AND RETAIN FINGERPRINTS?



In recent weeks we have received several questions from organizations contemplating collecting fingerprints of either staff or members of the public. Although the OIPC has not yet had the opportunity to address this through a formal report, we do encourage you to read Privacy Commissioner of Canada (PCC) findings from the PCC investigation into a practice of the Law School Admission Council. This concerned the requirement of Canadian law schools that students must provide a thumbprint in order to take the Law School Admission Test (LSAT). The Commissioner's office concluded that the Admission Council permanently cease the collection of thumbprints. The report dated May 29, 2008 is available at www.privcom.gc.ca.

IDENTITY THEFT PRESENTATION

In February, the CBA Access and Privacy Law Sections in Regina and Saskatoon will feature a representative of the RCMP Commercial Crime Unit speaking on Identity Theft. This will take place in Saskatoon at 12:00 pm on Tuesday, February 10, 2009 at the Saskatoon Club. In Regina, the presentation by **Cpl. Trevor Ellis** will be on Monday, February 9, 2009 at 12:00 pm at the Hotel Saskatchewan. Mark your calendars now. FOIP/HIPA Coordinators, Privacy Officers and access and privacy professionals are welcome. To register call the CBA office at 1 -800-424-8288.

DON'T MISS EXPERT PRESENTATION IN MARCH ON EHR ISSUES

The CBA Access and Privacy Law Sections in Regina and Saskatoon have confirmed that the speaker for the March meetings of those sections will be **Leahann McElveen**. The Regina meeting will be on Tuesday, March 10, 2009 at noon at the Hotel Saskatchewan. The Saskatoon meeting with be on Monday, March 9, 2009 at noon at the Saskatoon club.

Leahann is a Portfolio Officer in the office of the Alberta Information and Privacy Commissioner. Leahann has specialized in assessing the privacy and security implications of deploying information and communication technology in health care and, in 2008, conducted the first regulatory privacy breach investigation into a Canadian provincial electronic health record system. The Report is Investigation Report H2008-IR-001. This is available at the Alberta website: www.oipc.ab.ca. Leahann holds advanced specialty certification in health informatics technology management and is an instructor with the University of Alberta's Information Access and Protection of Privacy program.

BROWN BAG WORKSHOP SERIES

In 2009, free 'brown bag' workshops will be held at the OIPC office (503-1801 Hamilton Street, Regina). Topics and dates are as follows:

How to Survive as a FOIP/HIPA Coordinator (role and function) - February 25, 2009

How to Sever Documents - March 25, 2009

Fees and Fee Estimates - April 29, 2009

Duty to Assist - May 27, 2009

Each session will start at noon and end by 12:45 p.m. Bring your lunch. There will be handouts provided to all participants. Since space is limited please register in advance. Contact information for the February and March workshops is listed below in Future Events.

FUTURE EVENTS

February 9, 2009 - CBA Privacy & Access Law South Section Meeting: *Identity Theft* - Regina SK, Hotel Saskatchewan at 12:00 pm (to register call the CBA at 306-244-3898)

February 10, 2009 - CBA Privacy & Access Law North Section Meeting: *Identity Theft* - Saskatoon SK, Saskatoon Club at 12:00 pm (to register call the CBA at 306-244-3898)

February 25, 2009 - OIPC Brown Bag Workshop: *How to Survive as a FOIP/HIPA Coordinator* - 503-1801 Hamilton Street (to register contact Larissa at 798-0303 or lmcwhinney@oipc.sk.ca)

March 9, 2009 - CBA Privacy & Access Law North Section Meeting: *Electronic Health Records* - Saskatoon SK, Saskatoon Club at 12:00 pm (to register call the CBA at 306-244-3898)

March 10, 2009 - CBA Privacy & Access Law South Section Meeting: *Electronic Health Records* - Regina SK, Hotel Saskatchewan at 12:00 pm (to register call the CBA at 306-244-3898)

March 25, 2009 - OIPC Brown Bag Workshop: *How to Sever Documents* - 503-1801 Hamilton Street (to register contact Aaron at 798-2264 or aorban@oipc.sk.ca)

April 4-8, 2009 - HIMSS09 Annual Conference and Exhibition – Chicago, Illinois (visit http://www.himssconference.org/docs/HIMSS09MINIbrochure.pdf for more details)

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